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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/721,694   | 11/25/2003  | William T. Ball      | P06474US3           | 6303             |
| 34082  | 7590        | 05/18/2004           | EXAMINER            |                  |
| ZARLEY LAW FIRM P.L.C.<br>CAPITAL SQUARE<br>400 LOCUST, SUITE 200<br>DES MOINES, IA 50309-2350 |             |                      | PRUNNER, KATHLEEN J |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3751                |                  |

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/721,694

Applicant(s)

BALL, WILLIAM T.

Examiner

Kathleen J. Prunner

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because: (A) in Figs. 2 and 3, threads 31 are improperly indicated since the cylindrical body 60 of the cap 52 is clearly shown to screw onto the outer threads on the overflow port 30 and not on the inner threads thereof. A proposed drawing correction is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

### ***Specification***

3. The following informalities in the specification are noted: (A) on page 3, line 34, "40" should read --14--; and (B) on page 4, line 13, "into" should read --onto--. Appropriate correction is required.
4. The following informalities in the claims are noted: (A) in claim 1, on line 3, --an-- should be inserted after "and", "an endwall" should read --one of the endwalls--, and the comma after "comprising" should be changed to a colon; and (B) in claim 1, on line 8, "part" should read --port--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 3 calls for the cap to have “an externally threaded annular flange for interconnection with internal threads on the horizontal leg”. However, the specification supports and describes that the “cap 52 . . . has a cylindrical body 60 which has interior threads 62 and which are adapted to mate with the threads 31 of port 30 (Fig. 2)” (note lines 1-4, improperly numbered as lines 5-8, on page 4) and Fig. 3 clearly shows that the interior threads of the cap mate with the outer or exterior threads of the overflow port.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Delanoy. Delanoy discloses a plumbing test system having all the claimed features including a pipe 1 having a first exposed end and a second end in communication with a fluid source (note lines 9-16 on page 1) wherein the first end comprises a threaded portion 3 (note Fig. 2); a cap assembly 6 threadably mounted on the first end and wherein a portion 10 of the cap assembly is composed of a material capable of sealing the first end when the cap is threaded onto the first end (note lines 9-12 on page 1); the cap assembly 6 contains a cap 7 having an opening in a planar end with a sealing member 10 secured to the cap 7 and extending over the opening in the planar end (note lines 56-62 on page 1).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Delanoy. Lewis discloses an overflow system for a bathtub 10 which has a bottom, adjacent side walls and end walls (note Fig. 1), a drain port (at 17) in the bottom, and an overflow port (note Fig. 6) in one of the end walls having the claimed features including a drain pipe 19 adapted to be in communication with the drain port and the overflow port (note Fig. 1), the drain pipe 19 having an inverted L-shape (note Fig. 3a) including a horizontal leg extending into and through the overflow port of the bathtub 10 and a vertical leg extending downwardly for connection to a fluid drain system; the horizontal leg having threads 23 extending through the overflow port (note Fig. 7); a cap (constituted by capture nut 21) threadably mounted on an end of the horizontal leg extending through the overflow port (note Fig. 7); the cap 21 having an opening (note Fig. 3a) in its circular planar end with a sealing membrane (constituted by test plug 8) secured to the cap and extending over the opening in the circular planar end (note Figs. 3b and 7). Although Lewis fails to disclose a thin sealing membrane, attention is directed to Delanoy who discloses another test plug or cap 6 for a bathtub in which the cap 6 (note Fig. 1) has an opening 12 in its circular planar end with a thin sealing membrane (constituted by plate 10) secured to the cap (note Fig. 4) and extending over the opening in the circular planar end (note Fig. 1) in order to provide for an easy placing of the connections after the plumbing test has been applied (note lines 13-16 and 63-69 on page 1). It would have been obvious to one of ordinary skill in the bathtub cap or test plug system art, at the time the invention was made, to provide the test plug or cap of Lewis with a thin sealing membrane in view of the teachings of Delanoy in order to provide for an easy placing of the connections after the test has been applied.

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With respect to claim 3, Lewis also discloses that the horizontal leg can be formed with internal or interior threads which engage outer or exterior threads of the cap (note the last sentence in ¶ 0020).

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044.

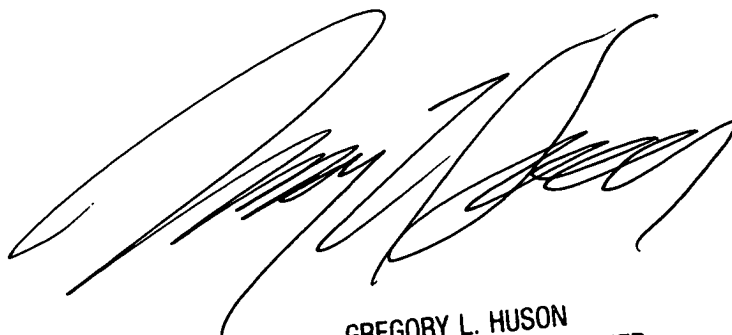
12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen J. Prunner

May 7, 2003



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